

DOCKET FILE COPY ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

AUG 27 2008

In the Matter of)

Implementation of the NET 911 Improvement Act)
of 2008)

WC Docket No. 08-171

NOTICE OF PROPOSED RULEMAKING**Adopted: August 22, 2008****Released: August 25, 2008****Comment Date: [12 days after date of publication in the Federal Register]****Reply Comment Date: [20 days after date of publication in the Federal Register]**

By the Commission: Chairman Martin and Commissioners Copps, Adelstein Tate, and McDowell
issuing separate statements.

I. INTRODUCTION

1. 911 service is critical to our nation's ability to respond to a host of crises. The New and Emerging Technologies (NET) 911 Improvement Act of 2008 (NET 911 Act), signed into law on July 23, 2008, is designed to "promote and enhance public safety by facilitating the rapid deployment of IP-enabled 911 and E911 services, encourage the Nation's transition to a national IP-enabled emergency network, and improve 911 and enhanced 911 (E911) access to those with disabilities."¹ This Notice of Proposed Rulemaking (Notice) marks our first step towards implementing this new legislation.

2. The NET 911 Act addresses several aspects of our nation's 911 system. This Notice focuses on one particular obligation in the NET 911 Act: The Commission must, no later than October 21, 2008,² issue regulations implementing certain key provisions that, among other things, ensure that providers of IP-enabled voice services have access to the capabilities they need to provide 911 and E911 service. We fully intend to have those regulations in place by Congress's deadline. Therefore we issue this Notice and provide a short comment cycle that will allow us to meet our statutory obligation.

II. BACKGROUND

3. The NET 911 Act explicitly imposes on each IP-enabled voice service provider the obligation to provide 911 service and E911 service in accordance with Commission requirements.³ The NET 911 Act also grants each IP-enabled voice service provider rights with respect to "capabilities" to provide 911

¹ New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-__, __ Stat. __, Preamble (NET 911 Act) (amending Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat. 1286 (Wireless 911 Act)).

² The NET 911 Act was signed into law on July 23, 2008. The Commission therefore must issue regulations no later than October 21, 2008. See NET 911 Act § 101(2); Wireless 911 Act § 6(c)(1).

³ See NET 911 Act § 101(2); Wireless 911 Act § 6(a). "IP-enabled voice service" is given the same meaning as "interconnected VoIP service," as defined by section 9.3 of our rules. See NET 911 Act § 101(3); Wireless 911 Act § 7(8); see also 47 C.F.R. § 9.3. The Commission regulations imposing 911 service obligations on interconnected VoIP providers are located at 47 C.F.R. §§ 9.3 *et seq.*

and E911 services.⁴ Specifically, section 102 of the NET 911 Act adds a new section 6 to the Wireless 911 Act, which states in relevant part:

(a) DUTIES.—It shall be the duty of each IP-enabled voice service provider to provide 9-1-1 service and enhanced 9-1-1 service to its subscribers in accordance with the requirements of the Federal Communications Commission, as in effect on the date of enactment of the New and Emerging Technologies 911 Improvement Act of 2008 and as such requirements may be modified by the Commission from time to time.

(b) PARITY FOR IP-ENABLED VOICE SERVICE PROVIDERS.—An IP-enabled voice service provider that seeks capabilities to provide 9-1-1 and enhanced 9-1-1 service from an entity with ownership or control over such capabilities, to comply with its obligations under subsection (a), shall, for the exclusive purpose of complying with such obligations, have a right of access to such capabilities, including interconnection, to provide 9-1-1 and enhanced 9-1-1 service on the same rates, terms, and conditions that are provided to a provider of commercial mobile service . . . , subject to such regulations as the Commission prescribes under subsection (c).⁵

(c) REGULATIONS.—The Commission—

(1) within 90 days after the date of enactment of the [NET 911 Act] shall issue regulations implementing such Act, including regulations that—

(A) ensure that IP-enabled voice service providers have the ability to exercise their rights under subsection (b);

(B) take into account any technical, network security, or information privacy requirements that are specific to IP-enabled voice services; and

(C) provide, with respect to any capabilities that are not required to be made available to a commercial mobile service provider but that the Commission determines under subparagraph (B) of this paragraph or paragraph (2)⁶ are necessary for an IP-enabled voice service provider to comply with its obligations under subsection (a), that such capabilities shall be available at the same rates, terms, and conditions as would apply if such capabilities were made available to a commercial mobile service provider.⁷

(2) shall require IP-enabled voice service providers to which the regulations apply to register with the Commission and to establish a point of contact for public safety and government officials relative to 9-1-1 and enhanced 9-1-1 service and access

⁴ See NET 911 Act § 101(2); Wireless 911 Act § 6(b).

⁵ For purposes of NET 911 Act, Congress specifically defined “commercial mobile service” by reference to section 332(d)(1) of the Communications Act of 1934, as amended. 47 U.S.C. § 332(d)(1) (stating that the term “commercial mobile service” means any mobile service that is provided for profit and makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission). See NET 911 Act § 101(2); Wireless 911 Act § 6(b).

⁶ We believe Congress may have intended to instead refer to paragraph 3 of the NET 911 Act and seek comment on what impact this has on whatever action would be appropriate for the Commission to take.

⁷ NET 911 Act § 101(2); Wireless 911 Act §§ 6(c)(1)(A)–(C).

4. The “requirements of the Federal Communications Commission, as in effect on the date of enactment of the [NET 911 Act]” referenced in the legislation are set forth in the Commission’s *VoIP 911 Order*.⁸ In that Order, the Commission required providers of “interconnected VoIP service”—referred to as “IP-enabled voice services” in the NET 911 Act—to provide 911 service using the existing wireline 911 infrastructure. Congress has specified that “[n]othing in the [NET 911 Act] shall be construed as altering, delaying, or otherwise limiting the ability of the Commission to enforce the Federal actions taken or rules adopted obligating an IP-enabled voice service provider to provide 9-1-1 or enhanced 9-1-1 service as of the date of the enactment of the [NET 911 Act].”⁹

III. DISCUSSION

5. In the discussion that follows, we seek comment on the specific duties imposed by the legislation and the elements of the regulations we are required to adopt. We ask about the capabilities for which the NET 911 Act affords IP-enabled voice service providers a right of access, how the Commission can ensure that IP-enabled voice service providers can exercise these rights, and how to provide that such capabilities are made available on the same rates, terms, and conditions that are provided to commercial mobile service providers. We also explore how the regulations we must adopt are impacted by requirements specific to IP-enabled voice service providers. We seek comment, generally, on the questions and tentative conclusions below.

A. “Capabilities”

6. The NET 911 Act states that IP-enabled voice service providers “shall . . . have a right of access to such capabilities, including interconnection, to provide 9-1-1 and enhanced 9-1-1 service on the same rates, terms, and conditions that are provided to CMS providers.”¹⁰ To what extent is it appropriate for the Commission to define “capabilities” in this rulemaking, or should we determine what constitutes “capabilities” on a case-by-case basis? To the extent a prospective determination is appropriate, we seek comment on the definition of “capabilities.” What would such a definition include and exclude? Are pseudo Automatic Number Identification (p-ANI), real-time Automatic Location Identification (ALI) database access, Emergency Service Numbers (ESN), Master Street Address Guides (MSAG), shell records, callback number, selective router interconnection for both voice and data transport, or other “elements” appropriately considered “capabilities” under the NET 911 Act?¹¹ Do “capabilities” include network services, testing, and agreements?¹² What other items, elements, features, functions, or agreements are appropriately considered capabilities? Because the NET 911 Act requires IP-enabled service providers to “have a right of access” to capabilities to provide 911 and enhanced 911 service “on the same rates, terms, and conditions that are provided to a provider of commercial mobile service,”¹³ we seek comment about what capabilities are currently required to be available to CMS providers. What, if any, capabilities “are necessary for an IP-enabled voice service provider to comply

⁸ *IP-enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005) (*VoIP 911 Order*), *aff’d* *Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006).

⁹ NET 911 Act § 101(2); Wireless 911 Act § 6(i).

¹⁰ NET 911 Act § 101(2); Wireless 911 Act § 6(b).

¹¹ See Letter from Ronald W. Del Sesto, Jr., Counsel for Vonage, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 04-36, 05-196, Attach. A at 1-3 (filed July 11, 2008).

¹² See *id.* at 1.

¹³ See NET 911 Act § 101(2); Wireless 911 Act § 6(b).

with its obligations” under section 6(a) of the Wireless 911 Act,¹⁴ but “are not required to be made available to a commercial mobile service provider”?¹⁵

7. With regard to mobile VoIP service used by CMRS¹⁶ carriers in conjunction with their CMRS service, we seek comment specifically on what capabilities “are necessary for [such mobile interconnected VoIP¹⁷] provider to comply with its obligations” under section 6(a) of the Wireless 911 Act. Specifically, what requirements should be imposed on the mobile VoIP provider and its roaming partner when offering mobile VoIP service in a roaming area outside its CMRS footprint?¹⁸ For example, T-Mobile has asked the Commission to waive or rule on several requirements of the *VoIP 911 Order* for its interconnected VoIP service,¹⁹ which allows a customer to use a dual-mode handset that works as a regular CMRS phone and, when it is in a WiFi hotspot, an interconnected VoIP phone. Their service uses CMRS default routing for VoIP 911 calls and “last known cell” information for automatic location information in their footprint, but is not able to use such “last known cell” information outside the footprint because it is not provided by its roaming partner.²⁰ Assuming that T-Mobile’s use of CMRS

¹⁴ See NET 911 Act § 101(2); Wireless 911 Act § 6(c)(1)(C).

¹⁵ NET 911 Act § 101(2); Wireless 911 Act § 6(c)(1)(C).

¹⁶ For the purposes of this NPRM, CMS and CMRS are used interchangeably.

¹⁷ For the purposes of this NPRM, “IP-enabled voice services” and “Interconnected VoIP” are used interchangeably.

¹⁸ Seeking additional comment on this particular issue is supported by public safety organizations such as the Association of Public-Safety Communications Officials-International (APCO) and the National Emergency Number Association (NENA). See Letter from Robert M. Gurss, Director, Legal and Government Affairs, APCO International, and Brian Fontes, Chief Executive Officer, NENA, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 04-36, 05-196 at 1 (filed Aug. 19, 2008) (stating that “we believe that the Commission should seek comments on [whether, pursuant to the NET 911 Improvement Act, wireless carriers should be required to provide roaming partners with last-known caller location information necessary for the proper routing of wireless VoIP calls to 9-1-1] issue at this time.”). See also Letter from Brian Fontes, CEO, NENA, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 04-36, 05-196 (filed Aug. 21, 2008) (“NENA believes that having the ability to route calls based on the last known location of a caller roaming on another provider’s network would provide public safety benefits. NENA would support the Commission taking steps to address this issue.”)

¹⁹ T-Mobile has posted an example of such an offering, called “Unlimited HotSpot Calling Service,” on its Web site. See http://www.t-mobile.com/shop/addons/services/information.aspx?tp=Svc_Tab_UnlimitedHotSpotCalling, last visited July 26, 2008:

Home is where the coverage is[.] Your T-Mobile wireless router creates a personal network for your HotSpot-enabled phone, for enhanced coverage at home. . . . Include the Unlimited HotSpot Calling service and you can make and receive unlimited nationwide calls over Wi-Fi from home, or at any US T-Mobile HotSpot location, anytime, day or night. . . . Whenever you’re out and not using a Wi-Fi network, your HotSpot-enabled phone works just like a regular mobile phone Buy a HotSpot-enabled phone and T-Mobile wireless router, so when you’re home, you’re covered.

²⁰ See Petition of T-Mobile USA, Inc. for Clarification, *IP-Enabled Services, E-911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-196 (filed July 29, 2005) (T-Mobile Petition); see also Joint Petition for Clarification of the National Emergency Number Association and the Voice on the Net (VON) Coalition, *IP-Enabled Services, E-911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-196 (filed July 29, 2005) (NENA/VON Petition). Specifically, T-Mobile has asked the Commission to rule that interconnected VoIP providers may use “network-derived location information” instead of a customer-provided Registered Location. See T-Mobile Petition at 4–5. Relatedly, T-Mobile asks the Commission to rule that interconnected VoIP providers need not obtain Registered Locations from their customers if they can obtain them automatically. See *id.* at 6; see also NENA/VON Petition at 8. T-Mobile has also asked for a ruling that it need not obtain any location (continued . . .)

default routing and associated "last known cell" information is sufficient, we seek comment on what modifications we should make to our rules when outside the footprint. For example, what requirements should be placed on the roaming partners of these dual-mode service providers to provide access to information necessary to employ "last known cell" in a roaming area in the same manner that dual-mode providers such as T-Mobile use such information when in their own network? Further, we seek comment generally on what capabilities we should require roaming partners to make available to mobile VoIP providers to ensure compliance with applicable 911 and E911 requirements. In addition, we seek comment on whether wireless carriers should be required pursuant to the NET 911 Act to provide roaming partners with last-known caller location information necessary for the proper routing of wireless VoIP calls to 911. We also seek comment on how such a requirement would affect incentives to reach roaming agreements and how the Commission can ensure that such a requirement would not prevent companies from forming roaming agreements they might otherwise reach.

B. Ownership, Control, Availability, and Right of Access

8. Who owns and controls each of the capabilities identified in response to the questions above? For each type of entity owning or controlling such capabilities, how should the Commission fulfill its statutory mandate to "ensure that IP-enabled voice service providers have the ability to exercise their rights under subsection (b)"?²¹ Does this mandate confer sufficient authority or jurisdiction upon the Commission to impose requirements on state, local or private entities? What other sources of authority or jurisdiction are available to the Commission to ensure that such capabilities are made available? Are there any additional actions the Commission should take to ensure that such capabilities are available per Congress's instructions? What are the implications of Congress's direction that IP-enabled voice service providers shall have a right of access to these capabilities "for the exclusive purpose of complying with" their obligations under the NET 911 Act?²²

C. Rates, Terms, and Conditions

9. The NET 911 Act requires that IP-enabled voice service providers receive a right of access to E911 network capabilities on the "same rates, terms, and conditions" as provided to CMS providers.²³ Under what rates, terms, and conditions are such capabilities provided to CMS providers? To what extent are capabilities made available to CMS providers under tariff, interconnection agreement, or some other form of agreement? To what extent are the terms of such agreements available for review by other CMS providers or providers of IP-enabled voice service?

10. Assuming that similar capabilities have varying rates, terms, and conditions, how should the Commission determine what rates, terms, and conditions are to be placed on certain capabilities? Is it

(Continued from previous page) _____

information from the customer until after service initiation if it is not "practicable to do so beforehand." *Id.* at 7. T-Mobile also asks the Commission to rule that a mobile or nomadic interconnected VoIP provider need not pass certain call-back and location information to a public safety answering point (PSAP) unless the PSAP has already implemented "non-call associated signaling and the ability to retrieve location information from real-time databases, and the implementation period in Rule § 20.18 has elapsed." *Id.* at 10; *see also* NENA/VON Petition at 4-5 (asking for clarification "that for non-native telephone numbers, routing to the appropriate PSAP meets the Commission's obligations where the PSAP is not yet capable of processing the dynamic data necessary for delivering E9-1-1"). Finally, T-Mobile asked to be able to deliver location information to PSAPs in the form of "x,y" coordinates rather than street addresses. *Id.* at 10.

²¹ NET 911 Act § 101(2); Wireless 911 Act § 6(c)(1)(A).

²² *See* NET 911 Act § 101(2); Wireless 911 Act § 6(b).

²³ *See* NET 911 Act § 101(2); Wireless 911 Act §§ 6(b), (c)(1)(C).

enough to mandate in our rules that those entities owning or controlling the capabilities needed for IP-enabled voice service providers provide such capabilities at the same rates, terms and conditions offered to CMS providers? Conversely, is it necessary to establish pricing standards for each of the capabilities that an IP-enabled voice service provider needs to meet the NET 911 Act's section 101(2) obligations? If so, what standards should apply? Can and should the Commission mandate disclosure of all rates, terms, and conditions concerning each capability from states, localities, and industry? How shall the Commission determine what rates, terms, and conditions would have been made available to CMS providers for capabilities that they do not use? Are there any other differences between CMS and IP-enabled voice service that we should consider with regard to the "rates, terms, and conditions" of access for IP-enabled voice service providers?

D. Technical, Network Security, or Information Privacy Requirements That Are Specific to IP-Enabled Voice Services

11. What technical, network security, or information privacy requirements specific to IP-enabled voice services must be taken into account when ensuring that capabilities are available to IP-enabled voice service providers? Are there any concerns that certain 911 systems may not offer the capabilities necessary particularly to meet the technical requirements of IP-enabled voice services? If so, how should we take into account these requirements when adopting regulations for IP-enabled voice service providers? What network security issues do providers of IP-enabled voice services pose for the 911 and E911 networks? What steps can the Commission take to correct or ameliorate these concerns? With respect to information privacy, are there any issues specific to IP-enabled voice service providers that raise new concerns regarding the protection of customer proprietary network information? What steps should the Commission take to ensure IP-enabled voice service providers' customers' information is protected during and after a 911 or E911 call? Should the Commission take any action at this time to require IP-enabled voice service providers to register with the Commission and to establish a point of contact for public safety and government officials relative to 911 and E911 service and access?²⁴ If so, what steps would be appropriate?

E. Other Considerations

12. Finally, what other issues relating to the NET 911 Act should the Commission consider? Are there particular issues relating to the Commission's jurisdiction, federal, state, local and private initiatives, or other issues that the Commission should take into consideration when adopting rules? Should the Commission delegate authority to enforce any regulations issued under subsection (c) to State commissions or other State or local agencies or programs with jurisdiction over emergency communications?²⁵ If so, what specifically should the Commission delegate and to which entity? What costs and burdens would rules resulting from the Notice impose upon small entities and how can they be ameliorated? Are there any other issues or significant alternatives that the Commission should consider to ease the burden on small entities?

IV. PROCEDURAL MATTERS

A. Ex Parte Presentations

13. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.²⁶ Persons making oral *ex parte* presentations are reminded that memoranda

²⁴ See NET 911 Act § 101(2); Wireless 911 Act § 6(c)(2).

²⁵ See NET 911 Act § 101(2); Wireless 911 Act § 6(d).

²⁶ 47 C.F.R. §§ 1.200 *et seq.*

summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.²⁷ Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

B. Comment Filing Procedures

14. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. **All filings related to this Notice of Proposed Rulemaking should refer to WC Docket No. 08-171.** Commenters need not resubmit material previously filed in that proceeding. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's e-Rulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- **For ECFS filers,** if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- **Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail** (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- **The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002.** The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- **Commercial overnight mail** (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

²⁷ See 47 C.F.R. § 1.1206(b)(2).

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

15. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. Parties should also send a copy of their filings to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-C140, 445 12th Street, SW, Washington, D.C. 20554, or by e-mail to cpdcopies@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

16. Documents in WC Docket No. 08-171 are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW, Room CY-A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

C. Accessible Formats

17. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0531 (voice), (202) 418-7365 (TTY).

D. Initial Regulatory Flexibility Analysis

18. As required by the Regulatory Flexibility Act,²⁸ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this Notice. The IRFA is set forth in the Appendix.²⁹ Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the Notice, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.³⁰

E. Paperwork Reduction Act Analysis

19. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

²⁸ *See* 5 U.S.C. § 603.

²⁹ *See* Appendix, *infra*.

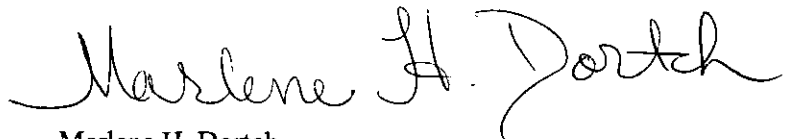
³⁰ *See* 5 U.S.C. § 603(a).

V. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED that pursuant to the authority contained in sections 1, 4(i)-(j), 201, 202, 222, 251, 252, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 201, 202, 222, 251, 252, 303(r), and section 6 of the Wireless Communications and Public Safety Act of 1999, as amended, this Notice of Proposed Rulemaking IS ADOPTED.

21. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script that reads "Marlene H. Dortch". The signature is written in dark ink and is positioned above the printed name and title.

Marlene H. Dortch
Secretary

APPENDIX

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),³¹ the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from today's Notice. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided above. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.³² In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.³³

A. Need for, and Objectives of, the Proposed Rules

2. In the Notice, the Commission considers how to best make 911 capabilities available to IP-enabled voice service providers at the same rates, terms, and conditions available to commercial mobile service (CMS) providers. Specifically, the Commission seeks comments regarding its need to issue regulations within 90 days of NET 911 Act's enactment,³⁴ including regulations that:

(A) ensure that IP-enabled voice service providers have the ability to exercise their rights under subsection (b);

(B) take into account any technical, network security, or information privacy requirements that are specific to IP-enabled voice services; and

(C) provide, with respect to any capabilities that are not required to be made available to a commercial mobile service provider but that the Commission determines ... are necessary for an IP-enabled voice service provider to comply with its obligations [to provide 911 service and enhanced 911 service], that such capabilities shall be available at the same rates, terms, and conditions as would apply if such capabilities were made available to a commercial mobile service provider.³⁵

For each of these issues, the Commission also seeks comment on the burdens, including those placed on small carriers, associated with corresponding Commission rules related to each issue and whether there are alternative rules that might lessen any burden.

B. Legal Basis

3. The legal basis for any action that may be taken pursuant to the Notice is contained in sections 1, 4(i)-(j), 201, 202, 222, 251, 252, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i)-(j), 201, 202, 222, 251, 252, 303(r), and section 6 of the Wireless 911 Act, as amended.

³¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, 110 Stat. 857 (1996).

³² See 5 U.S.C. § 603(a).

³³ See 5 U.S.C. § 603(a).

³⁴ The NET 911 Act was signed into law on July 23, 2008. The Commission therefore must issue regulations no later than October 21, 2008. See NET 911 Act § 101(2); Wireless 911 Act § 6(c)(1).

³⁵ NET 911 Act § 101(2); Wireless 911 Act §§ 6(c)(1)(A)-(C).

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

4. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.³⁶ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."³⁷ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.³⁸ A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).³⁹

1. Wireline Carriers and Service Providers

5. *Incumbent Local Exchange Carriers (ILECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁰ According to Commission data,⁴¹ 1,307 carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

6. *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴² According to Commission data,⁴³ 859 carriers reported that they were engaged in the provision of either competitive local exchange carrier or competitive access provider services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees.⁴⁴ In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are "Other Local Service Providers." Of the

³⁶ 5 U.S.C. § 604(a)(3).

³⁷ 5 U.S.C. § 601(6).

³⁸ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

³⁹ 15 U.S.C. § 632.

⁴⁰ 13 C.F.R. § 121.201, NAICS code 517110.

⁴¹ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, Table 5.3, page 5-5 (February 2007) (*Trends in Telephone Service*). This source uses data collected as of October 20, 2005.

⁴² 13 C.F.R. § 121.201, NAICS code 517110.

⁴³ *Trends in Telephone Service* at Table 5.3.

⁴⁴ *Id.*

44, an estimated 43 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our action.

7. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."⁴⁵ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.⁴⁶ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

8. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁷ According to Commission data,⁴⁸ 184 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 181 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

9. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁹ According to Commission data,⁵⁰ 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 853 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

10. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵¹ According to Commission data,⁵² 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

⁴⁵ 5 U.S.C. § 601(3).

⁴⁶ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

⁴⁷ 13 C.F.R. § 121.201, NAICS code 517911.

⁴⁸ *Trends in Telephone Service* at Table 5.3.

⁴⁹ 13 C.F.R. § 121.201, NAICS code 517911.

⁵⁰ *Trends in Telephone Service* at Table 5.3.

⁵¹ 13 C.F.R. § 121.201, NAICS code 517110.

⁵² *Trends in Telephone Service* at Table 5.3.

11. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵³ According to Commission data,⁵⁴ 330 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 330 companies, an estimated 309 have 1,500 or fewer employees and 21 have more than 1,500 employees.⁵⁵ Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by our action.

12. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵⁶ According to Commission data,⁵⁷ 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action.

13. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵⁸ According to Commission data,⁵⁹ 104 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 102 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our action.

14. *800 and 800-Like Service Subscribers*.⁶⁰ Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁶¹ The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.⁶² According to our data, at the beginning of July 2006, the number of 800 numbers assigned was 7,647,941; the number of 888 numbers assigned was 5,318,667; the number of 877 numbers assigned was 4,431,162; and the number of 866 numbers assigned was 6,008,976. We do not have data specifying the number of these subscribers that are not independently

⁵³ 13 C.F.R. § 121.201, NAICS code 517110.

⁵⁴ *Trends in Telephone Service* at Table 5.3.

⁵⁵ *Id.*

⁵⁶ 13 C.F.R. § 121.201, NAICS code 517110.

⁵⁷ *Trends in Telephone Service* at Table 5.3.

⁵⁸ 13 C.F.R. § 121.201, NAICS code 517911.

⁵⁹ *Trends in Telephone Service* at Table 5.3.

⁶⁰ We include all toll-free number subscribers in this category, including those for 888 numbers.

⁶¹ 13 C.F.R. § 121.201, NAICS code 517911.

⁶² *Trends in Telephone Service* at Tables 18.4, 18.5, 18.6, 18.7.

owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,647,941 or fewer small entity 800 subscribers; 5,318,667 or fewer small entity 888 subscribers; 4,431,162 or fewer small entity 877 subscribers; and 5,318,667 or fewer small entity 866 subscribers.

2. Wireless Carriers and Service Providers

15. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

16. *Wireless Telecommunications Carriers (except Satellite)*. Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.⁶³ Prior to that time, the SBA had developed a small business size standard for wireless firms within the now-superseded census categories of "Paging" and "Cellular and Other Wireless Telecommunications."⁶⁴ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the first category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.⁶⁵ Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.⁶⁶ For the second category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.⁶⁷ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.⁶⁸ Thus, using the prior categories and the available data, we estimate that the majority of wireless firms can be considered small. According to Commission data, 432 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data.⁶⁹ We have estimated that 221 of these are small, under the SBA small business size standard.⁷⁰ Thus, under this category and size standard, about half of firms can be considered small. This information is also included in paragraph 23.

⁶³ 13 C.F.R. § 121.201, NAICS code 517210.

⁶⁴ 13 C.F.R. § 121.201, NAICS codes 517211, 517212.

⁶⁵ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517211 (issued Nov. 2005).

⁶⁶ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

⁶⁷ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517212 (issued Nov. 2005).

⁶⁸ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

⁶⁹ *Trends in Telephone Service* at Table 5.3.

⁷⁰ *Id.*

17. *Common Carrier Paging.* The SBA has developed a small business size standard for Paging, under which a business is small if it has 1,500 or fewer employees.⁷¹ According to Commission data,⁷² 365 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 360 have 1,500 or fewer employees, and 5 have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. In addition, in the Paging *Third Report and Order*, we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁷³ A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.⁷⁴ The SBA has approved these small business size standards.⁷⁵ An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.⁷⁶ Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

18. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A "small business" is an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards.⁷⁷ The Commission auctioned geographic area licenses in the WCS service. In the auction, held in April 1997, there were seven winning bidders that qualified as "very small business" entities, and one that qualified as a "small business" entity.

19. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for "Cellular and Other Wireless Telecommunications" services.⁷⁸ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁷⁹

⁷¹ 13 C.F.R. § 121.201, NAICS code 517211 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

⁷² *Trends in Telephone Service* at Table 5.3.

⁷³ *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, GN Docket No. 93-252, PP Docket No. 93-253, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068-70, paras. 291-295 (1997) (220 MHz *Third Report and Order*).

⁷⁴ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from A. Alvarez, Administrator, SBA (Dec. 2, 1998).

⁷⁵ *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, PR Docket No. 93-253, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, paras. 98-107 (1999).

⁷⁶ *Id.* at 10085, para. 98.

⁷⁷ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

⁷⁸ 13 C.F.R. § 121.201, NAICS code 517212.

⁷⁹ *Id.*

According to Commission data, 432 carriers reported that they were engaged in the provision of wireless telephony.⁸⁰ We have estimated that 221 of these are small under the SBA small business size standard.

20. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.⁸¹ For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.⁸² These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.⁸³ No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.⁸⁴ On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

21. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.⁸⁵ A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards.⁸⁶ In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses.

⁸⁰ *Trends in Telephone Service* at Table 5.3.

⁸¹ See *Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 61 FR 33859 (July 1, 1996); see also 47 C.F.R. § 24.720(b).

⁸² *Id.*

⁸³ See, e.g., *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532 (1994).

⁸⁴ FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released January 14, 1997). See also *Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses*, WT Docket No. 97-82, Second Report and Order, 12 FCC Rcd 16436 (1997).

⁸⁵ *Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS*, GEN Docket No. 90-314, ET Docket No. 92-100, PP Docket No. 93-253, Second Report and Order and Second Notice of Proposed Rulemaking, 15 FCC Rcd 10456 (2000).

⁸⁶ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

22. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees.⁸⁷ The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

23. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁸⁸ This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.⁸⁹ A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small business size standards.⁹⁰ Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.⁹¹ In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.⁹²

24. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million

⁸⁷ 13 C.F.R. § 121.201, NAICS code 517212.

⁸⁸ *220 MHz Third Report and Order*, 12 FCC Rcd at 11068–70, at paras. 291–95.

⁸⁹ *Id.* at 11068–70, para. 291.

⁹⁰ See letter to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

⁹¹ See generally *220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (1998).

⁹² *Phase II 220 MHz Service Spectrum Auction Closes*, Public Notice, 14 FCC Rcd 11218 (1999).

in each of the previous calendar years, respectively.⁹³ These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

25. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order*, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁹⁴ A "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.⁹⁵ Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.⁹⁶

26. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.⁹⁷ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).⁹⁸ The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," i.e., an entity employing no more than 1,500 persons.⁹⁹ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

27. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.¹⁰⁰ We will use SBA's small business size

⁹³ 47 C.F.R. § 90.814(b)(1).

⁹⁴ See *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to part 27 of the Commission's Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299 (2000).

⁹⁵ See generally *220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (1998).

⁹⁶ *700 MHz Guard Band Auction Closes*, Public Notice, 16 FCC Rcd 4590 (2001).

⁹⁷ The service is defined in section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

⁹⁸ BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules, 47 C.F.R. §§ 22.757 and 22.759.

⁹⁹ 13 C.F.R. § 121.201, NAICS code 517210.

¹⁰⁰ The service is defined in section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.¹⁰¹ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

28. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.¹⁰² Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars.¹⁰³ There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

29. *Fixed Microwave Services.* Fixed microwave services include common carrier,¹⁰⁴ private operational-fixed,¹⁰⁵ and broadcast auxiliary radio services.¹⁰⁶ At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the

¹⁰¹ 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

¹⁰² 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

¹⁰³ *Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

¹⁰⁴ See 47 C.F.R. §§ 101 *et seq.* (formerly, Part 21 of the Commission's Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

¹⁰⁵ Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

¹⁰⁶ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. See 47 C.F.R. Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.¹⁰⁷ The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

30. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.¹⁰⁸ There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services.¹⁰⁹ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.¹¹⁰

31. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous calendar years.¹¹¹ An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.¹¹² The SBA has approved these small business size standards.¹¹³ The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by our action.

32. *Wireless Cable Systems.* Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service ("BRS"), formerly Multipoint Distribution Service ("MDS"),¹¹⁴ and the

¹⁰⁷ 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

¹⁰⁸ This service is governed by Subpart I of Part 22 of the Commission's Rules. See 47 C.F.R. §§ 22.1001–22.1037.

¹⁰⁹ 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

¹¹⁰ *Id.*

¹¹¹ See *Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands*, ET Docket No. 95-183, PP Docket No. 93-253, Report and Order, 12 FCC Rcd 18600 (1998).

¹¹² *Id.*

¹¹³ See Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

¹¹⁴ MDS, also known as Multichannel Multipoint Distribution Service ("MMDS"), is regulated by Part 21 of the Commission's rules; see 47 C.F.R. Part 21, subpart K; and has been renamed the Broadband Radio Service (BRS); see Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands; Part 1 of the Commission's Rules—Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission's Rules (continued . . .)

Educational Broadband Service ("EBS"), formerly Instructional Television Fixed Service ("ITFS"),¹¹⁵ to transmit video programming and provide broadband services to residential subscribers.¹¹⁶ These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services.¹¹⁷ We estimate that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Local Multipoint Distribution Service ("LMDS") is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.¹¹⁸ As described below, the SBA small business size standard for the broad census category of Cable and Other Program Distribution, which consists of such entities generating \$13.5 million or less in annual receipts, appears applicable to MDS, ITFS and LMDS.¹¹⁹ Other standards also apply, as described.

33. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction,¹²⁰ the Commission defined a small business as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years.¹²¹ This definition of a small entity in the context of MDS auctions has been approved by the SBA.¹²² In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities.¹²³ MDS licensees and wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$13.5 million annually. Therefore, we estimate that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

(Continued from previous page) —————

With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico, 19 FCC Rcd 14165 (2004) ("*MDS/ITFS Order*").

¹¹⁵ ITFS systems are regulated by Part 74 of the Commission's rules; see 47 C.F.R. Part 74, subpart I. ITFS, an educational service, has been renamed the Educational Broadband Service (EBS); see *MDS/ITFS Order*, 19 FCC Rcd 14165. ITFS licensees, however, are permitted to lease spectrum for MDS operation.

¹¹⁶ See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eleventh Annual Report*, 20 FCC Rcd 2507, 2565 ¶ 131 (2006) ("*2006 Cable Competition Report*").

¹¹⁷ *Id.*

¹¹⁸ See *Local Multipoint Distribution Service*, 12 FCC Rcd 12545 (1997).

¹¹⁹ 13 C.F.R. § 121.201, NAICS code 517510.

¹²⁰ MDS Auction No. 6 began on November 13, 1995, and closed on March 28, 1996. (67 bidders won 493 licenses.)

¹²¹ 47 C.F.R. § 21.961(b)(1).

¹²² See *ITFS Order*, 10 FCC Rcd at 9589.

¹²³ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standards for "other telecommunications" (annual receipts of \$13.5 million or less). See 13 C.F.R. § 121.201, NAICS code 517910.

34. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS).¹²⁴ We estimate that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, we estimate that at least 1,932 ITFS licensees are small entities.

35. In the 1998 and 1999 LMDS auctions,¹²⁵ the Commission defined a small business as an entity that has annual average gross revenues of less than \$40 million in the previous three calendar years.¹²⁶ Moreover, the Commission added an additional classification for a "very small business," which was defined as an entity that had annual average gross revenues of less than \$15 million in the previous three calendar years.¹²⁷ These definitions of "small business" and "very small business" in the context of the LMDS auctions have been approved by the SBA.¹²⁸ In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, we believe that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

36. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.¹²⁹ In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years.¹³⁰ A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.¹³¹ These size standards will be used in future auctions of 218–219 MHz spectrum.

37. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the

¹²⁴ In addition, the term "small entity" under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)–(6). We do not collect annual revenue data on ITFS licensees.

¹²⁵ The Commission has held two LMDS auctions: Auction 17 and Auction 23. Auction No. 17, the first LMDS auction, began on February 18, 1998, and closed on March 25, 1998. (104 bidders won 864 licenses.) Auction No. 23, the LMDS re-auction, began on April 27, 1999, and closed on May 12, 1999. (40 bidders won 161 licenses.)

¹²⁶ See *LMDS Order*, 12 FCC Rcd at 12545.

¹²⁷ *Id.*

¹²⁸ See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

¹²⁹ *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

¹³⁰ *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

¹³¹ *Id.*

24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons.¹³² We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent¹³³ and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

38. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million.¹³⁴ "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years.¹³⁵ The SBA has approved these small business size standards.¹³⁶ These size standards will apply to the future auction, if held.

3. Satellite Service Providers

39. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of \$13.5 million.¹³⁷ The most current Census Bureau data, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of "Satellite Telecommunications" and "Other Telecommunications." Under both prior categories, such a business was considered small if it had, as now, \$13.5 million or less in average annual receipts.¹³⁸

40. The first category of Satellite Telecommunications "comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."¹³⁹ For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.¹⁴⁰ Of this total, 307

¹³² 13 C.F.R. § 121.201, NAICS code 517212 (This category will be changed for purposes of the 2007 Census to "Wireless Telecommunications Carriers (except Satellite)," NAICS code 517210.).

¹³³ Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

¹³⁴ *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 at para. 77 (2000); see also 47 C.F.R. § 101.538(a)(2).

¹³⁵ *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 at para. 77 (2000); see also 47 C.F.R. § 101.538(a)(1).

¹³⁶ See Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

¹³⁷ 13 C.F.R. § 121.201, NAICS code 517410 (2007).

¹³⁸ 13 C.F.R. § 121.201, NAICS codes 517410 and 517910 (2002).

¹³⁹ U.S. Census Bureau, 2002 NAICS Definitions, "517410 Satellite Telecommunications"; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

¹⁴⁰ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (continued . . .)

firms had annual receipts of under \$10 million, and 26 firms had receipts of \$10 million to \$24,999,999.¹⁴¹ Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

41. The second category of Other Telecommunications “comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.”¹⁴² For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.¹⁴³ Of this total, 303 firms had annual receipts of under \$10 million and 15 firms had annual receipts of \$10 million to \$24,999,999.¹⁴⁴ Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

4. Cable and OVS Operators

42. In 2007, the SBA recognized new census categories for small cable entities.¹⁴⁵ However, there is no census data yet in existence that may be used to calculate the number of small entities that fit these definitions. Therefore, we will use prior definitions of these types of entities in order to estimate numbers of potentially-affected small business entities. In addition to the estimates provided above, we consider certain additional entities that may be affected by the data collection from broadband service providers. Because section 706 requires us to monitor the deployment of broadband regardless of technology or transmission media employed, we anticipate that some broadband service providers will not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

43. *Cable and Other Program Distribution.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.”¹⁴⁶ The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having \$13.5 million or less in annual receipts.¹⁴⁷ According to Census Bureau data for 2002, there were a total of 1,191 firms in this category

(Continued from previous page) _____
(Including Legal Form of Organization),” Table 4, NAICS code 517410 (issued Nov. 2005).

¹⁴¹ *Id.* An additional 33 firms had annual receipts of \$25 million or more.

¹⁴² U.S. Census Bureau, 2002 NAICS Definitions, “517910 Other Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

¹⁴³ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 517910 (issued Nov. 2005).

¹⁴⁴ *Id.* An additional 14 firms had annual receipts of \$25 million or more.

¹⁴⁵ 13 C.F.R. § 121.201.

¹⁴⁶ U.S. Census Bureau, 2002 NAICS Definitions, “517510 Cable and Other Program Distribution”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

¹⁴⁷ 13 C.F.R. § 121.201, NAICS code 517510 (This category will be changed for purposes of the 2007 Census to “Wired Telecommunications Carriers,” NAICS code 517110.).

that operated for the entire year.¹⁴⁸ Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.¹⁴⁹ Thus, under this size standard, the majority of firms can be considered small.

44. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.¹⁵⁰ Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.¹⁵¹ In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.¹⁵² Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers.¹⁵³ Thus, under this second size standard, most cable systems are small.

45. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."¹⁵⁴ The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.¹⁵⁵ Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.¹⁵⁶ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,¹⁵⁷ and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

¹⁴⁸ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

¹⁴⁹ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

¹⁵⁰ 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

¹⁵¹ These data are derived from R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805–D-1857.

¹⁵² 47 C.F.R. § 76.901(c).

¹⁵³ Warren Communications News, *Television & Cable Factbook 2006*, "U.S. Cable Systems by Subscriber Size," page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

¹⁵⁴ 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1–3.

¹⁵⁵ 47 C.F.R. § 76.901(f); see *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (Cable Services Bureau 2001).

¹⁵⁶ These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, "Top 25 Cable/Satellite Operators," pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, "Ownership of Cable Systems in the United States," pages D-1805–D-1857.

¹⁵⁷ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. See 47 C.F.R. § 76.909(b).

46. *Open Video Services.* Open Video Service (OVS) systems provide subscription services.¹⁵⁸ As noted above, the SBA has created a small business size standard for Cable and Other Program Distribution.¹⁵⁹ This standard provides that a small entity is one with \$13.5 million or less in annual receipts. The Commission has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service.¹⁶⁰ Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

5. Electric Power Generation, Transmission and Distribution

47. *Electric Power Generation, Transmission and Distribution.* The Census Bureau defines this category as follows: "This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer."¹⁶¹ The SBA has developed a small business size standard for firms in this category: "A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours."¹⁶² According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year.¹⁶³ Census data do not track electric output and we have not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric output. Consequently, we estimate that 1,644 or fewer firms may be considered small under the SBA small business size standard.

6. Internet Service Providers, Web Portals, and Other Information Services

48. In 2007, the SBA recognized two new small business, economic census categories. They are (1) Internet Publishing and Broadcasting and Web Search Portals,¹⁶⁴ and (2) All Other Information Services.¹⁶⁵ However, there is no census data yet in existence that may be used to calculate the number of small entities that fit these definitions. Therefore, we will use prior definitions of these types of entities in order to estimate numbers of potentially-affected small business entities.

¹⁵⁸ See 47 U.S.C. § 573.

¹⁵⁹ 13 C.F.R. § 121.201, NAICS code 517110.

¹⁶⁰ See <http://www.fcc.gov/mb/ovs/csovsr.html> (current as of February 2007).

¹⁶¹ U.S. Census Bureau, 2002 NAICS Definitions, "2211 Electric Power Generation, Transmission and Distribution"; <http://www.census.gov/epcd/naics02/def/NDEF221.HTM>.

¹⁶² 13 C.F.R. § 121.201, NAICS codes 221111, 221112, 221113, 221119, 221121, 221122, footnote 1.

¹⁶³ U.S. Census Bureau, 2002 Economic Census, Subject Series: Utilities, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS codes 221111, 221112, 221113, 221119, 221121, 221122 (issued Nov. 2005).

¹⁶⁴ 13 C.F.R. § 121.201, NAICS code 519130 (establishing a \$500,000 revenue ceiling).

¹⁶⁵ 13 C.F.R. § 121.201, NAICS code 519190 (establishing a \$6.5 million revenue ceiling).

49. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs “provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.”¹⁶⁶ Under the SBA size standard, such a business is small if it has average annual receipts of \$23 million or less.¹⁶⁷ According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year.¹⁶⁸ Of these, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

50. *Web Search Portals.* Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that “operate web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.”¹⁶⁹ The SBA has developed a small business size standard for this category; that size standard is \$6.5 million or less in average annual receipts.¹⁷⁰ According to Census Bureau data for 2002, there were 342 firms in this category that operated for the entire year.¹⁷¹ Of these, 303 had annual receipts of under \$5 million, and an additional 15 firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

51. *Data Processing, Hosting, and Related Services.* Entities in this category “primarily ... provid[e] infrastructure for hosting or data processing services.”¹⁷² The SBA has developed a small business size standard for this category; that size standard is \$23 million or less in average annual receipts.¹⁷³ According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year.¹⁷⁴ Of these, 6,418 had annual receipts of under \$10 million, and an additional 251 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

¹⁶⁶ U.S. Census Bureau, “2002 NAICS Definitions: 518111 Internet Service Providers”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

¹⁶⁷ 13 C.F.R. § 121.201, NAICS code 518111.

¹⁶⁸ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518111 (issued Nov. 2005).

¹⁶⁹ U.S. Census Bureau, “2002 NAICS Definitions: 518112 Web Search Portals”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

¹⁷⁰ 13 C.F.R. § 121.201, NAICS code 518112.

¹⁷¹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518112 (issued Nov. 2005).

¹⁷² U.S. Census Bureau, “2002 NAICS Definitions: 518210 Data Processing, Hosting, and Related Services”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

¹⁷³ 13 C.F.R. § 121.201, NAICS code 518210.

¹⁷⁴ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518210 (issued Nov. 2005).

52. *All Other Information Services.* “This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).”¹⁷⁵ Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$6.5 million or less in average annual receipts.¹⁷⁶ According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year.¹⁷⁷ Of these, 138 had annual receipts of under \$5 million, and an additional four firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

53. *Internet Publishing and Broadcasting.* “This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast.”¹⁷⁸ The SBA has developed a small business size standard for this census category; that size standard is 500 or fewer employees.¹⁷⁹ According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year.¹⁸⁰ Of these, 1,351 had employment of 499 or fewer employees, and six firms had employment of between 500 and 999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

54. Any potential proposals from this Notice will not impose reporting or recordkeeping requirements that would be subject to the Paperwork Reduction Act. Therefore, we have not attempted here to provide an estimate in terms of burden hours. Rather, we are asking commenters to provide the Commission with reliable information and comments on any costs and burdens on small entities.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

55. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹⁸¹

¹⁷⁵ U.S. Census Bureau, “2002 NAICS Definitions: 519190 All Other Information Services”; <http://www.census.gov/epcd/naics02/def/NDEF519.HTM>.

¹⁷⁶ 13 C.F.R. § 121.201, NAICS code 519190.

¹⁷⁷ U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 519190 (issued Nov. 2005).

¹⁷⁸ U.S. Census Bureau, “2002 NAICS Definitions: 516110 Internet Publishing and Broadcasting”; <http://www.census.gov/epcd/naics02/def/NDEF516.HTM>.

¹⁷⁹ 13 C.F.R. § 121.201, NAICS code 516110.

¹⁸⁰ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 516110 (issued Nov. 2005).

¹⁸¹ 5 U.S.C. § 603(c).

56. As noted above, the Notice invites comment on regulations that the Commission must implement 90 days after the 911 NET Act's enactment, including regulations that:

(A) ensure that IP-enabled voice service providers have the ability to exercise their rights under subsection (b);

(B) take into account any technical, network security, or information privacy requirements that are specific to IP-enabled voice services; and

(C) provide, with respect to any capabilities that are not required to be made available to a commercial mobile service provider but that the Commission determines ... are necessary for an IP-enabled voice service provider to comply with its obligations [to provide 911 service and enhanced 911 service], that such capabilities shall be available at the same rates, terms, and conditions as would apply if such capabilities were made available to a commercial mobile service provider.

Specifically, we invite comment regarding how the Commission could ease any potential burden on small entities. The Commission seeks comment on significant alternatives and recommends that small entities file comments in response to the Notice. We anticipate that the record will be developed concerning alternative ways in which the Commission could lessen the burden on classes of carrier or entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

57. None.

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

Re: Implementation of the NET 911 Act, WC Docket No. 08-171

Today, we initiate a proceeding to implement the New and Emerging Technologies 911 Improvement Act of 2008 (NET 911 Act). Supporting the safety of the public and the needs of our first responders is our highest obligation as public officials. Therefore, I am pleased to take this opportunity to further refine our rules to ensure that the most basic need of the public to call for help by dialing 911 is fulfilled.

As I have said before, anyone who dials 911 has a reasonable expectation that he or she will be connected to an emergency operator; this expectation exists whether that person is dialing 911 from a traditional wireline phone, a wireless phone, or a VoIP phone. Moreover, we need to ensure that our enhanced 911 (E911) rules provide meaningful automatic location information that permits first responders to reliably find callers, even when they are using mobile wireless or VoIP phones.

In the NET 911 Act, Congress affirmed that interconnected VoIP providers must provide 911 and E911 and directed the Commission to ensure that interconnected VoIP providers have the tools they need to provide such service. I support these objectives and look forward to working with my colleagues on these critical public safety issues.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

Re: *Implementation of the NET 911 Act, WC Docket No. 08-171*

Three years ago, the FCC established E911 rules for VoIP services. At that time, I warned that if VoIP providers could not obtain access to selective routers, the Commission would need to step in to safeguard VoIP customers. Unfortunately, that did not happen and VoIP providers have faced obstacles in obtaining access. So just one month ago, Congress enacted the NET 911 Act, establishing a 90-day deadline for the Commission to issue rules to ensure the appropriate degree of access. Today's item initiates a fast-track proceeding to do just that. I look forward to working with my colleagues, public safety and consumer representatives, wireless carriers, VoIP providers, and other interested parties to resolve these critical issues quickly.

Today's item also seeks comment on an issue that is not typically thought of as related to VoIP E911, namely the terms of roaming agreements between wireless carriers. The issue is being raised here because it appears that, in certain situations, wireless providers offering dual-mode VoIP/CMRS handsets use the "last known cell" (*i.e.*, the last CMRS cell tower contacted) as part of their routing protocol for mobile VoIP calls. It is not entirely clear at this point whether CMRS providers can obtain this information when their customers are roaming on another CMRS network. Accordingly, we ask whether the Commission should require host roaming networks to provide this information to their roaming partners. I am pleased that my colleagues have agreed to also seek comment on how this will affect incentives to form roaming agreements and, in particular, on how the Commission can ensure that it does not prevent companies from forming roaming agreements they might otherwise reach.

Leading public safety organizations believe that the Commission should address this question about roaming practices, and I agree 100 percent. Indeed, I wish the Commission had addressed this public safety question—as well as related questions—long ago. The fact is that, over three years ago, industry asked our agency for guidance about how to handle E911 for dual-mode, mobile CMRS/VoIP handsets. This was well before such handsets were available to consumers—and I certainly wish the Commission had acted on this reasonable request for clarification and/or rulemaking at that time. Instead, we are now faced with the less optimal task of playing catch-up by addressing technologies that are already in the marketplace.

So, given where we stand today, my first preference would be to deal with the full set of issues raised by dual-mode, mobile CMRS/VoIP handsets in a single, comprehensive proceeding. But with that option unavailable at this time, I think the next best approach is to ask the roaming question in the proceeding that we have before us today. Even if this issue may not be exactly what Congress had in mind when it drafted the NET E911 Act (and that is certainly my reading of the statute and associated legislative history), it is nevertheless an important issue and I look forward to building a record on it starting now.

Thanks to the Bureau and my colleagues for their work on this item.

STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN

Re: Implementation of the NET 911 Act, WC Docket No. 08-171

Since the earliest days of this Commission, promoting our nation's public safety through communications has been our highest calling. In recent years, the migration of communications networks to IP-based technology has created both opportunities and challenges for public safety and emergency communications. Responding to technological and marketplace changes, this Commission made clear three years ago that consumers of interconnected VoIP services deserve access to life saving 911 and E911 services. With the passage of the "NET 911 Improvement Act of 2008" (NET 911 Act), Congress reaffirmed this mandate and charged us with an active role in transitioning to an IP-enabled emergency communications network.

Finding that more than 9 million consumers use VoIP services as a substitute for traditional telephony, Congress directed the Commission to ensure that providers of IP-enabled voice services comply with 911 and E911 obligations and that these providers have access to the capabilities necessary to provide 911 and E911 services. By opening this proceeding today, we take the first step toward implementing Congress's directive.

I am pleased that we now seek comment in a neutral and balanced fashion on the specific rights and obligations imposed by Congress in the NET 911 Act. Though I expect to hear differing opinions on how to implement these statutory provisions – and, indeed, we have much work to do to meet Congress's 90-day statutory deadline – we must remain committed to making E911 a success for these increasingly important services and for the consumers who reach for that critical lifeline in their time of need. Additionally, I note that while there are a number of E911 compliance and policy questions raised by dual-mode mobile commercial mobile radio service/VoIP handsets that use Wi-Fi technology, these issues are more appropriately addressed in a separate proceeding. Indeed, at least one party sought clarification on the Commission's policies on E911 requirements for IP-enabled service providers several years ago.¹ By attempting to append these issues here, we risk diverting this Notice from the core issues, potentially making it more difficult to reach the 90-day statutory deadline.

Nevertheless, I approve this item and look forward to working with representatives of the public safety community, providers, and all interested stakeholders to implement this Act quickly and ensure that E911 services remain robust and reliable.

¹ See T-Mobile Petition, *supra* note 18.

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

Re: Implementation of the NET 911 Act, WC Docket No. 08-171

Today the Commission fulfills another one of our important roles for citizens and first responders as we continue to develop rules for 911 and E911 service. As new technologies, new business models, and new services emerge, it is critical that we update our rules to take into consideration how citizens will continue to make emergency calls, how networks will handle those calls, and how our public safety service providers will respond.

With the passage of the New and Emerging Technologies 911 Improvement Act of 2008 (NET 911 Act), Congress has placed 911 and E911 obligations on interconnected VoIP providers and required the Commission to issue rules to ensure that these providers have the access they need to enable such service. This Notice of Proposed Rulemaking seeks comment on the elements of the regulations we are required to adopt.

I especially want to recognize Congressman Bart Gordon from Tennessee for his continued dedication to this issue and I applaud both the President and Congress for their leadership on this critical piece of legislation. My colleagues and I recognize that alacrity is indispensable to emergency communications operations, and I am well aware of the role such operations play in promoting public safety. I was fortunate to have recently toured the new, state-of-the-art, fully interoperable 911 call center in New York City, which links together NYPD, NYFD and the city's emergency medical services, and I have also toured interoperable emergency communications facilities in New Orleans and the surrounding parishes. I look forward to hearing from these and all public safety communications providers, network operators, and all those who rely upon our rules to ensure that each call reaches public safety providers and receives the response it deserves.

I also want to recognize efforts by industry, both in providing new and innovative services to its customers, and in attempting to comply with the Commission's rules to enable emergency calling and other critical public safety functions. We should applaud carriers that have found unique ways to provide valuable services to consumers and take into account the experience of such carriers in developing 911 and E911 call routing that better allows completion of emergency calls. For example, CMRS carriers that add new technology such as WiFi to their existing service actually allow an additional layer of protection for completing a very small subset of emergency calls, including calls that otherwise would not be made available to mobile users who do not have a similar service.

American families rely upon the 911 system no matter how they make emergency calls, and no matter the device or service they use to make the call. The Commission's rules therefore should encourage better ways to provide the caller location and other information public safety needs to fulfill its life-saving mission, while also encouraging the new technologies and services consumers want. I look forward to the comments in this proceeding and addressing these issues to the benefit of American consumers and the public safety community.

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL**

Re: *Implementation of the NET 911 Act, WC Docket No. 08-171*

I am voting to approve today's *NPRM* pursuant to the recently-passed New and Emerging Technologies 911 Improvement Act of 2008 (NET 911 Act). I am pleased to join my colleagues in furthering the abilities of our nation's emergency response providers for the benefit of all Americans.

At the same time, I question the direction that our inquiry appears to be taking. By virtue of an extemporaneous discussion regarding mobile VoIP, we veer well off the course set by Congress. Through this discussion, the Commission is seeking comment on possible new regulatory duties neither intended nor mandated by Congress. In so doing, the Commission could jeopardize the tight deadlines established by the NET 911 Act.

I strongly agree with the public safety community that the question of whether or how, as a matter of policy, wireless carriers offering open WiFi or other off-network services share location information is worthy of additional study. This is especially true given that wireless providers have been and are continuing to roll out multi-mode open platform devices at a steady pace. This question, however, is in no way compelled by the plain language or intent of the NET 911 Act. Moreover, a petition for clarification raising this specific question and related issues, and which presents an ideal forum for handling this inquiry, has been pending at the Commission for over three years.